

ELLIOT BLOCK SBN 116999  
Chief Counsel  
HEATHER L. HUNT SBN 225861  
Staff Counsel III  
Attorneys for Complainant  
DEPARTMENT OF RESOURCES RECYCLING & RECOVERY  
1001 I Street, 24<sup>th</sup> Floor  
P. O. Box 4025  
Sacramento, CA 95812-4025  
Telephone: (916) 341- 6068  
Facsimile: (916) 319-7677

STATE OF CALIFORNIA

CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

In the matter of:

OAKLAND SCRAP, LLC, OPERATOR .

TPID NO: 1656967-01

RESPONDENT.

STATEMENT OF ISSUES FOR THE  
DENIAL OF WASTE AND USED TIRE  
HAULER REGISTRATION

PUBLIC RESOURCES CODE SECTION  
42960

AGENCY NO: 2011-000102-DEN

**INTRODUCTION**

This Department of Resources Recycling and Recovery's (CALRECYCLE) Statement of Issues seeks the DENIAL of the Waste and Used Tire Hauler Registration Application submitted by OAKLAND SCRAP, LLC (RESPONDENT) on June 2, 2011, for three years, in accordance with Public Resources Code (PRC) 42960. This denial of registration is so issued based on the following facts.

**STATEMENT OF FACTS**

1. Pursuant to Public Resources Code (PRC) section 42950 et seq., CALRECYCLE has the authority to regulate and conduct enforcement actions regarding Waste Tire Haulers

1 within the State of California and attendant regulations contained in Title 14 of the California  
2 Code of Regulations (CCR).

3 2. Pursuant to PRC section 42800, et seq., CALRECYCLE has authority to inspect,  
4 permit, regulate and conduct enforcement actions against Waste Tire Facilities (WTF) within  
5 the State of California and attendant regulations contained in Title 14 of the California Code of  
6 Regulations (CCR).

7 3. Pursuant to PRC section 42960, CALRECYCLE has the authority to deny a  
8 Waste Tire Hauler Registration for a period of up to three years if the holder of the registration  
9 commits specific violations, including:

- 10 i. More than three violations of, or fails to comply with any requirements of  
11 California's Waste Tire Hauler Registration Laws (PRC section 42950 et seq.) or  
12 California's Waste Tire Storage Laws (PRC section 42800 et seq.), or the regulations  
13 adopted pursuant to those provisions, within a one-year period, or  
14 ii. Any misrepresentation or omission of a significant fact or other required  
15 information in the application for a waste and used tire hauler registration or commits  
16 any misrepresentation or omission of fact on any manifest more than three times in one  
17 year.

18 4. On June 2, 2011, CALRECYCLE received RESPONDENT's Waste Tire Hauler  
19 Registration Application numbered 1656961 (Application), which listed RESPONDENT as the  
20 name of the business, and Dorj Ariunbaatar as the owner of RESPONDENT's LLC.

21  
22 **A. RESPONDENT committed more than three violations of, or has failed to**  
23 **comply with the Waste Tire Hauler Registration Laws or Waste Tire Storage Laws,**  
24 **or the regulations adopted pursuant to those provisions in the one-year time**  
25 **period from June 24, 2010, through June 24, 2011.**

26 ///

27 ///

28 ///



1        (i) RESPONDENT committed violations of, or has failed to comply with Waste Tire  
2 Storage Laws and regulations within the one-year time period from June 24, 2010, to June 24,  
3 2011.

4        5.        PRC section 42808 defines a major WTF as a WTF where, at any time, 5,000 or  
5 more waste tires are or will be stored, stockpiled, accumulated, or discarded.

6        6.        14 CCR section 18423 requires every operator of a new or existing major WTF to  
7 submit a Major WTF Permit Application to CALRECYCLE.

8        7.        Pursuant to PRC section 42824, on and after September 1, 1994, it is unlawful to  
9 direct or transport waste tires to a major WTF or to accept waste tires at a major WTF unless  
10 the operator has obtained a Major WTF Permit.

11       8.        RESPONDENT operated a WTF located at 851 81<sup>st</sup> Avenue, C4, Oakland, CA,  
12 94621 (the site) from the time period starting on or before April, 2011, through June 24, 2011.  
13 At no time starting on or before April, 2011, through June 24, 2011, did RESPONDENT submit  
14 a Major WTF Permit Application for the site. At no time between April, 2011, and June 24,  
15 2011, was RESPONDENT in possession of a Major WTF Permit for the site.

16       9.        On May 16, 2011, CALRECYCLE received Waste Tire Hauler/Storage Complaint  
17 number 2011-12059 (Complaint) from Brian Chrisman, representative for Borgata Recycling.  
18 In the Complaint, Mr. Chrisman claimed that RESPONDENT was operating an illegal WTF by  
19 stockpiling more than 5,000 tires in its warehouse.

20       10.       During an inspection of the site on May 18, 2011, and documented in Waste  
21 Tires Survey and Inspection Report (Inspection Report) number I1-1167851, Alameda County  
22 Environmental Health Inspectors Steven Plunkett and Paresh Khatri observed 11,715 waste  
23 tires, thereby creating an unpermitted major WTF in violation of PRC section 42824, and 14  
24 CCR section 18423.

25       ///

26       ///

27       ///

28       ///

1        (ii) RESPONDENT committed violations of, or has failed to comply with Waste Tire  
2 Hauler Laws and regulations within the one-year time period from June 24, 2010, to June 24,  
3 2011.

4        11.     PRC section 42951(a) requires every person who engages in the transportation  
5 of waste or used tires to hold a valid waste and used tire hauler registration, unless exempt  
6 pursuant to PRC section 42954.

7        12.     Once CALRECYCLE approves a Waste Tire Hauler Registration, it issues  
8 registration cards and/or decals for each vehicle listed in the Waste Tire Hauler Registration  
9 Application, in accordance with 14 CCR section 18456.2. Pursuant to 14 CCR sections  
10 18456.2(c) and 18454(f) the registration card and/or decal issued to a specific vehicle is not  
11 transferable from vehicle to vehicle, and said card or decal must at all times be present in the  
12 vehicle to which it was issued.

13       13.     PRC section 42954(a) (6) exempts persons hauling waste and used tires from  
14 the registration requirement set forth in PRC section 42951(a), when the person hauling waste  
15 or used tires is a common carrier who transports something other than waste or used tires to  
16 an original destination point and then transports waste or used tires on the return part of the  
17 trip, and the revenue derived from the waste or used tires is incidental when compared to the  
18 revenue earned by the carrier.

19       14.     Pursuant to 14 CCR section 18450(a)(10) the revenue derived from transporting  
20 the used and waste tires by a common carrier must be incidental (10% of the total revenue)  
21 when compared to the total revenue earned by the common carrier.

22       15.     PRC section 42961.5, in conjunction with 14 CCR sections 18459 and 18460.2,  
23 prohibits waste tire haulers from hauling used or waste tires without preparing and maintaining  
24 in the hauling vehicle a manifest, also known as Comprehensive Trip Log Receipts (CTL  
25 receipts), documenting loads of used or waste tires picked-up and/or delivered.

26       16.     14 CCR section 18460.1 requires a common carrier to carry a copy of the  
27 completed CTL in its vehicle if the common carrier transports 10 or more waste tires at one  
28 time.



1        17.    14 CCR section 18459(c)(5) requires a CTL to accompany each load of 10 or  
2 more waste or used tires hauled by a common carrier.

3        18.    14 CCR section 18459.3 requires an end-use facility to retain a copy of each  
4 completed CTL at its place of business for three years, and to make the copy available to any  
5 authorized representative of CALRECYCLE upon request.

6        19.    14 CCR section 18450(a)(15) defines an end-use facility as the facility where  
7 used or waste tires are unloaded and/or accepted.

8        20.    14 CCR section 18461 requires end-use facilities to retain copies of CTL receipts  
9 documenting loads of used and waste tires delivered to the end-use facility as provided by a  
10 registered waste tire hauler. If tires are not delivered by a registered waste tire hauler, 14 CCR  
11 section 18461 requires the end-use facility to complete an Unregistered Hauler &  
12 Comprehensive Trip Log Substitution Form (Substitute Trip Form) within 48 hours of the tire  
13 delivery and submit said form to CALRECYCLE. Furthermore, the end-use facility must retain  
14 a copy of said form at the place of business for a period of 3 years and must make said form  
15 available to any representative of CALRECYCLE upon request.

16        21.    On January 13, 2010, Julie He, representative for RESPONDENT, contacted  
17 Keith Cambridge, Supervisor of the Tire Hauler Compliance Unit, by e-mail and requested that  
18 CALRECYCLE process an Application for Agricultural/Common Carrier Exemption Letter on  
19 behalf of RESPONDENT. Mr. Cambridge explained the Common Carrier Exemption  
20 requirements to Ms. He, including the requirement that RESPONDENT would be required to  
21 complete CTL receipts for loads carrying 10 or more used or waste tires.

22        22.    On April 14, 2011, CALRECYCLE received an Application for  
23 Agricultural/Common Carrier Exemption Letter from RESPONDENT. In said application,  
24 RESPONDENT listed the business owner as Oakland Scrap, LLC, the business facility  
25 address as 851 81<sup>st</sup> Avenue, C4, Oakland, California 94621, and the business operator or  
26 manager as HS Trading Company. Said application was signed by Julie He as authorized  
27 agent and President for RESPONDENT.  
28

1       23.    On April 20, 2011, CALRECYCLE issued to RESPONDENT Common Carrier  
2 Exemption Number 1656967 in the form of a letter. The letter again advised RESPONDENT  
3 that RESPONDENT would "still be required to manifest ten (10) or more waste or used tires  
4 while transporting said tires within the state of California." The letter further required  
5 RESPONDENT to advise CALRECYCLE if it no longer hauled waste tires in the manner  
6 allowed by the Common Carrier Exemption.

7       24.    On May 16, 2011, CALRECYCLE received Waste Tire Hauler/Storage Complaint  
8 numbered 2011-12059 (Complaint) from Brian Chrisman, representative for Borgata  
9 Recycling, referenced above in paragraph 9 of this Statement of Issues. In the Complaint, Mr.  
10 Chrisman further alleged that RESPONDENT was picking up tires as a hauler and bringing the  
11 tires back to their WTF, in violation of PRC section 42951(a).

12       25.    During the inspection of the site on May 18, 2011, referenced above in paragraph  
13 10 of this Statement of Issues, Alameda County Environmental Health Inspectors Steven  
14 Plunkett and Paresh Khatri observed that RESPONDENT had received more than 11,000  
15 waste or used tires at the site, making the site an end-use facility. During that inspection,  
16 RESPONDENTS were unable to produce CTL receipts for review documenting the  
17 transportation of the 11,715 waste tires to the site, in violation of 14 CCR sections 18461 and  
18 18459.3.

19       26.    On May 18, 2011, Barbara Strough, Supervisor for CALRECYCLE's Tire  
20 Enforcement-North Division, spoke to Ms. He regarding the permitting requirements for a WTF.  
21 Ms. He explained that RESPONDENT's business model was to pick up tires from generators,  
22 bring them back to the site, bale them, and ship them overseas, thereby admitting that  
23 RESPONDENT operated as a waste tire hauler and not a common carrier eligible for an  
24 exemption from the waste tire hauler registration requirement, in violation of PRC section  
25 42951, and requiring RESPONDENT to prepare CTL receipts for each load of used or waste  
26 tires hauled in accordance with PRC section 42961.5 and 14 CCR section 18459.

27       27.    Because of the unavailability of CTL receipts on the May 18<sup>th</sup> inspection, Mr.  
28 Cambridge performed a review of CTL receipts received by CALRECYCLE pursuant to 14



CCR sections 18459.2.1 and 18461. The table below lists the only CTL receipts submitted to CALRECYCLE that document loads of waste tires delivered to or picked up from the site prior to the May 18<sup>th</sup> inspection. The information in the reviewed CTL receipts provides documentation for only 3,500 of the 11,715 waste tires observed onsite, meaning that RESPONDENT accepted tires at the site without either obtaining a CTL receipt or preparing an Substitute Trip Form in violation of 14 CCR sections 18459.3 and 18461. Furthermore, no additional CTL receipts were observed by Mr. Cambridge documenting loads of 10 or more used or waste tires hauled by RESPONDENT, as there should have been based on Ms. He's admissions to Ms. Strough on May 18<sup>th</sup>, in violation of PRC section 42961.5 and 14 CCR sections 18459 and 18460.2.

Comprehensive Trip Log	Load Date	Hauler Name	Pickup PTE	Delivery PTES	Facility Name
4258305-C	May 09, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.
4258309-B	May 11, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.
4258313-B	May 12, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.
4258317-B	May 13, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.
4258315-B	May 16, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.
4258320-B	May 17, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.
4258324-A	May 18, 2011	Lopez Tire Recycling	0	500	Oakland Scrap, LLC.

28. On June 2, 2011, CALRECYCLE received RESPONDENT's Application, referenced above in paragraph 4 of this Statement of Issues, which listed RESPONDENT as the name of the business, and Dorj Ariunbaatar as the owner of RESPONDENT's LLC. Included in the list of vehicles for which RESPONDENT requested registration decals was a vehicle with CA license plate number 9B57492 and VIN 1XPGDU9X8XD487945 that was registered through the California Department of Motor Vehicles (DMV) to Dorj Ariunbaatar; however, that vehicle was already registered to haul tires by CALRECYCLE for Borgata Recycling, in violation of 14 CCR section 18454(f).

29. During an inspection of the site on June 24, 2011, and documented in Inspection Report Number I1-1167797, Alameda County Environmental Health Inspectors Plunkett and Khatri, along with CALRECYCLE staff, Barbara Strough, Mary LeClaire, and Katie Bruner-Benson, observed 334 waste tires. Ms. Bruner-Benson further observed that no CTL receipts

1 or Substitute Trip Forms were on site and available for review documenting the removal of  
2 waste tires from the site, in violation of 14 CCR sections 18459.3 and 18461.

3 30. During the same inspection on June 24, 2011, CALRECYCLE staff observed a  
4 truck in the parking lot that had no license plate. Upon further investigation Ms. Bruner-Benson  
5 observed that the VIN for that truck was 1GDJG31U841912745, and that the 2011  
6 CALRECYCLE-issued tire hauler decal number 11-06665 was affixed to the passenger side  
7 windshield. Upon returning to CALRECYCLE, Inspector Bruner-Benson reviewed  
8 CARLECYCLE's records and found that decal number 11-06665 was never issued to  
9 RESPONDENT's vehicle, but instead was issued by CALRECYCLE to a vehicle with California  
10 license plate number 9E04401 and VIN 1FUJA6AVMayDN71513 that was listed in the Waste  
11 Tire Hauler Registration Application for MGL Express Transportation. RESPONDENT'S use of  
12 a decal on a vehicle to which it was not specifically issued violated 14 CCR sections 18454(f)  
13 and 18456.2.

14 31. During the same inspection on June 24, 2011, a separate hauler registered with  
15 CALRECYCLE delivered a load of tires to the site. RESPONDENT failed to obtain a CTL  
16 receipt, in violation of 14 CCR sections 18459.3 and 18461, until the Inspectors requested that  
17 RESPONDENT call the driver back and obtain the CTL.

18 **B. RESPONDENT misrepresented or omitted a significant fact or other**  
19 **required information in its hauler Application for a waste and used tire hauler**  
20 **registration.**

21 32. In its Application, reference above in paragraph 4 of this Statement of Issues,  
22 RESPONDENT requested a registration decal for a vehicle with CA license plate number  
23 9B57492 and VIN 1XPGDU9X8XD487945, and registered through the California DMV to Dorj  
24 Ariunbaatar, thereby representing that this vehicle was available for use by RESPONDENT to  
25 haul tires within California; however, said vehicle was already registered to haul tires by  
26 CALRECYCLE for Borgata Recycling.

27 ///

28 ///



**ALLEGATIONS OF SPECIFIC VIOLATIONS**

33. CALRECYCLE is seeking the DENIAL of RESPONDENT'S Waste Tire Hauler Registration for three years pursuant to PRC section 42960 based on the above-mentioned facts and for the following violations as more specifically set forth in the foregoing paragraphs:

- a. On at least one occasion RESPONDENT violated PRC section 42824, by storing more than 4,999 waste tires onsite without first obtaining a Major WTF Permit.
- b. On at least one occasion RESPONDENT violated 14 CCR section 18423 for failing to apply for a major WTF permit when a major WTF was required for the site.
- c. On at least one occasion RESPONDENT violated PRC section 42951(a) by hauling loads of used or waste tires without holding a valid used and waste tire hauler registration while not meeting the requirements of hauling under an exemption, such as an exemption for a common carrier as set forth in PRC section 42952, and 14 CCR sections 18450(a)(10).
- d. On at least one occasion RESPONDENT violated 14 CCR section 18454(f) by requesting in its Application a registration decal for a vehicle already registered by CALRECYCLE to a separate used and waste tire hauler.
- e. On at least one occasion RESPONDENT violated 14 CCR sections 18454(f) and 18456.2(c) by transferring a decal that had been issued to a specific vehicle by CALRECYCLE to a different vehicle to which the decal had not been specifically issued.
- f. On at least one occasion RESPONDENT violated PRC section 42961.5 and 14 CCR sections 18459 and 18460.2 by failing to prepare and maintain CTL RECEIPTS for loads of used and waste tires hauled by RESPONDENT who was acting as a used and waste tire hauler.

- 1 g. On at least three separate occasions RESPONDENT violated 14 CCR  
2 sections 18459.3 and 18461 for failing to retain and make available to a  
3 representative of CALRECYCLE CTL receipts or Substitute Trip Forms for  
4 loads of waste tires delivered to or picked-up from the site.
- 5 h. On at least one occasion RESPONDENT misrepresented or omitted  
6 required information in the Application by stating that a specific vehicle  
7 was available to be registered for use hauling waste and used tires by  
8 CALRECYCLE to RESPONDENT even though said vehicle was already  
9 registered by CALRECYCLE to a separate used and waste tire hauler.

10  
11 **RIGHT TO HEARING**  
12

13 You are hereby notified that pursuant to the provisions of section 42960 of the California  
14 Public Resources Code and Government Code section 11506, that you are entitled to a  
15 hearing to refute the allegations against you contained in this Statement of Issues. **If you**  
16 **wish to have a hearing on this matter, you must complete and return the enclosed**  
17 **REQUEST FOR HEARING to our Legal Office within 30 days of receipt of this notice.**  
18 **Failure to complete and return the REQUEST FOR HEARING within 30 days will be**  
19 **deemed a waiver of your rights to a hearing.**

20 Pursuant to the above referenced Public Resources Code and Government Code  
21 sections, discovery requests by any party must be made within thirty days after the service of  
22 this Denial of Waste and Used Tire Hauler Registration.

23  
24 Dated this 19 day of August, 2011.

25  
26   
27 HEATHER L. HUNT  
28 Staff Counsel III



STATE OF CALIFORNIA

CALIFORNIA DEPARTMENT OF RESOURCES RECYCLING & RECOVERY

In the matter of:

OAKLAND SCRAP, LLC, OPERATOR .

TPID NO: 1656967-01

RESPONDENT.

**REQUEST FOR A HEARING**

AGENCY NO: 2011-000102-DEN

I, \_\_\_\_\_, in the above-entitled proceeding, acknowledge receipt of a copy of the STATEMENT OF ISSUES FOR THE DENIAL OF THE WASTE AND USED TIRE HAULER REGISTRATION.

I hereby request a hearing to permit me to present my defense to the charges contained in said STATEMENT OF ISSUES FOR THE DENIAL OF THE WASTE AND USED TIRE HAULER REGISTRATION.

All correspondence concerning this proceeding should be sent to the following address:

(If you are represented by an attorney, all correspondence concerning this matter will be sent to the attorney.)

Address:

Telephone:

City:

State:

Zip Code:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Please send to:

CalRecycle Legal Office  
Attention: Gloria Bell  
P.O. Box 4025, MS 24-B  
Sacramento, CA 95812-4125

**DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**801 K STREET, MS 19-01, SACRAMENTO, CALIFORNIA 95814 • (916) 322-4027 • [WWW.CALRECYCLE.CA.GOV](http://WWW.CALRECYCLE.CA.GOV)**RIGHT TO A HEARING**

Your are hereby notified that pursuant to the provisions of Section 42960 of the California Public Resources Code that you are entitled to a hearing to refute the allegations against you contained in the STATEMENT OF ISSUES FOR THE DENIAL OF THE WASTE AND USED TIRE HAULER REGISTRATION. **If you wish to have a hearing on this matter, you must complete and return the enclosed REQUEST FOR HEARING to our Legal Office within 30 days of receipt of this notice. Failure to complete and return the REQUEST FOR HEARING within 30 days will be deemed a waiver of your right to a hearing.**

**HEARING PROCEDURES**

If you request one, a hearing will be conducted before an Administrative Law Judge of the Office of Administrative Hearings of the Department of General Services, at one of their office locations throughout the State, upon the charges made in the STATEMENT OF ISSUES FOR THE DENIAL OF THE WASTE AND USED TIRE HAULER REGISTRATION.

1. You may be present at the hearing.
2. You have the right to be represented by an attorney at your own expense.

You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel.





3. You may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you.
4. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents, or other things by applying to the Office of Administrative Hearings.
5. Pursuant to 1 California Code of Regulations, section 1032, parties are entitled, upon request, to be provided with the assistance of an interpreter if they do not proficiently speak or understand the English language. If you require the assistance of an interpreter, timely notice of this fact should be given to our office so that appropriate arrangements can be made.
6. You are hereby further notified that pursuant to the provisions of 14 CCR section 17050 et seq. the violations alleged against you may cause you to be placed on the CalRecycle's Unreliable Contractors, Subcontractors, Borrowers, and Grantees list. Placement on this list may prohibit you from obtaining contracts, loans, or grants from the CalRecycle for a period up to three years.
7. Continuances are not favored. If you need a continuance, write or call immediately to the Office of Administrative Hearings, 1515 Clay Street, Suite 206, Oakland, California 94612 (510) 622-2722. That agency has control of continuances. Requests without good cause will be denied.